IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.403 OF 2007

M/s.K.K.Construction through its
Proprietor Shri Kailas S. Kale ...Appellant

vs.

Kalyan Dombivli Municipal Corproation ...Respondent

Mr.Ajay S. Gadkari for the Appellant
Mr.A.S.Rao for the Respondent.

CORAM: A.S.OKA,J.
DATE : JUNE 8, 2007.

P.C.:

1. Heard Advocates for the parties. The Appeal is by an unsuccessful Plaintiff. The challenge in this Appeal is to the Judgment and Order dated 25th April 2007 passed by the learned Joint Civil Judge, Senior Division, Kalyan by which the Application for temporary injunction made by the Appellant was rejected.

2. On the basis of a tender notice issued by the Respondent-Corporation for collection of fees from the hawkers carrying on business within the territorial limits of the Respondent-Corporation for the year 2006-2007, the Appellant offered his bid. According to the tender notice, the contract was to be awarded for a period of one year. The offer given by the Appellant was accepted in terms of the conditions of the contract. The Appellant furnished a bank guarantee in the sum of Rs.19,60,000/-. The grievance of the Appellant is that

though the contract was to be for a period of one year, while issuing the work order it was stated that the contract will be up to the period ending on 31st March 2007. According to the case of the Appellant, he acted upon the said work order on clear understanding given to him by the Officers of the Respondent-Corporation that the contract will be in fact for a period of one year.

3. As a stand was taken by the Respondent-Corporation that the contract stands terminated on 31st March 2007, a suit for declaration was filed by the Appellant declaring that the action of the Respondent-Corporation of terminating the contract on 31st March 2007 before completion of one year from the date of issuing work order was illegal. A declaration was claimed that the agreement executed by the Respondent-Corporation in favour of the Appellant was in contravention of the terms and conditions of the tender which was accepted. In the alternative, a prayer was made for compensation.

4. The prayer in the Application for temporary injunction is for restraining the Respondent from terminating the contract on 31st March 2007 till the completion of one year from the date of contract. The said prayer has been rejected by the impugned order.

5. The learned Advocate for the Appellant has invited my attention to the tender notice and the terms and conditions of the tender. He pointed out that as per the terms and conditions of the tender, the contract was to be for a period of one year. He also invited my attention to the correspondence made between the parties. He pointed out that the learned Judge has totally ignored that the Petitioner in fact moved the Commissioner of the Respondent-Corporation for extending the period of the contract. He pointed out that there was a material on record to show that only on the basis of the assurance given that the contract was to continue for a period of one year, the Appellant acted upon the agreement and the work order. Without prejudice to the aforesaid contentions, he submitted that in the event this Court is not inclined to interfere with the impugned Judgment and Order, the Appellant may be permitted to continue the contract till the Respondent-Corporation appoints any other contractor after completion of procedure inviting the new tenders. He submitted that in fact the new tenders were invited and as per the instructions given by the Appellant, the contractor who has offered highest bid has withdrawn his bid. He submitted that on the basis of order dated 11th May 2007, the Appellant is collecting the fees by acting upon the contract. The learned Advocate for the Respondent supported the impugned order. He stated that after 21st April 2007 the Respondent-Corporation itself started collecting fees and only

after passing of the ad-interim order dated 11th May 2007, by this by this court, the Appellant again started collecting the fees.

6. I have considered the submissions. It is true that in the tender notice it is stated that the term of the contract will be for a period of one year. However, it will be necessary to refer to the agreement dated 22nd November 2006 executed by and between the Appellant and the Respondent for the said work. It is specifically provided therein that the term of the contract will be till 31st March 2007. In fact, in the work order issued by the Respondent-Corporation, it is specifically mentioned that the period of contract will be expire on 31st March 2007. The Appellant acted upon the agreement and the work order and started collecting the fees. Now, after completion of the term provided in the agreement, the Appellant wants injunction which will have the effect of continuing the contract after 31st March 2007. Considering the terms of the agreement and considering the prayer made in the suit, the learned Trial Judge was justified in not granting the equitable and discretionary relief of injunction.

7. Assuming that there is a wrongful termination of contract, or there is a breach of contract by the Respondent, the monetary loss which may be caused to the Appellant can be always quantified in terms of the money. The learned Trial

Judge was justified in rejecting the prayer for temporary injunction as after the expiry of period of contract, the Appellant cannot be permitted to collect the fees from the hawkers. There is no right vesting the Appellant to continue collection of the fees till a new contractor is appointed.

8. I find no error in the impugned order. The Appeal is therefore dismissed with no order as to costs.

9. It is made clear that the observations made in this Judgment are only for a limited purpose of deciding the legality of the order passed by the Trial Court and the suit will be decided uninfluenced by the observations made by this Court.

JUDGE